weight of the testimony supports the finding that the amounts paid by the claimant were not in excess of the prices obtaining in that locality. Upon the merits, therefore, the contests have failed.

While it is true, as found by the local officers, that the improvements shown in the second annual proof were not commenced until after the expiration of the second year of the entry, it was clearly shown that they were begun before notice of contest was served and without knowledge that the contests had been filed. It was further shown that the contract for the performance of the work shown upon the second annual proof was made long prior to the expiration of the second year of the entry and that the delay in the work was through no fault of the claimant. Under these circumstances, the Department is unwilling to cancel the entry at this time.

As above modified, the decision of the Commissioner of the General Land Office is affirmed.

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## HUGHES v. STATE OF FLORIDA.

*Decided August 14, 1913.*

MINERAL LAND—DEPOSIT OF SHELL ROCK.

A deposit of shell rock, used for building purposes, construction of roads and streets and the foundations of houses, is not a mineral within the meaning of the general mining laws.

BUILDING STONE PLACER—SCHOOL INDEMNITY SELECTION.

Land embraced in a school indemnity selection is not subject to location as a building stone placer under the act of August 4, 1892.

JONES, *First Assistant Secretary:*

This is an appeal by E. Lee Hughes from the decision of the Commissioner of the General Land Office of March 25, 1912, dismissing his protest against indemnity school land selection No. 09395 filed by the State of Florida at Gainesville, Florida, for lot 3, Sec. 27 and lot 2, Sec. 34, T. 30 S., R. 19 E., containing .08 and 2.34 acres, respectively.

The above tracts constitute an island situated in Hillsboro Bay, known as Bull Frog Mound. It was ordered surveyed as public land by decision of the Department of October 27, 1906, which also directed that it be disposed of as an isolated tract. Later, however, upon August 8, 1907, one Gibson was allowed to make homestead entry thereon. In Davis *v.* Gibson (38 L. D., 265) a contest affidavit, which alleged that the land consisted of a deposit of shell on a sand bar which is covered at high tide, save the deposit of shell, and that there is no soil on the mound and it is not susceptible of cultivation or of use as a place of residence, was held sufficient. The

homestead entry was canceled as a result of the contest proceedings. The present selection was filed August 25, 1911, it being stated that it was in lieu of a loss of 2.42 acres in Sec. 16, T. 3 N., R. 5 E., the cause of loss being given as "Georgia Boundary." Publication of notice of the selection was made from September 7, 1911, to October 5, 1911.

January 10, 1912, E. Lee Hughes located a placer claim on this land, the notice of location reading as follows:

> NOTICE is hereby given that the undersigned, having complied with the requirements of Chapter Six (6) of Title Thirty-two (32) of the Revised Statutes of the United States, and the local laws, rules and regulations has located three (3) acres of placer mining ground situated in Hillsboro County, State of Florida, and described as follows, to wit:
>
> Lot No. 3 in section 27, and lot No. 2 in section 34, all in township 30 south, range 19 east, Tallahassee Meridian, Florida.

January 12, 1912, he filed a protest against the selection, stating the fact of his location and alleged that the land is "a mound of stone and shell such as is used for building purposes, construction of roads and streets, and the foundations for houses, and is absolutely of no other value whatsoever." Section 4 of the protest reads:

> 4th. Said land is of such character as is contemplated by the act of Congress of August 4th, 1892, extending the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands.

In the appeal it is urged that it having been found in the homestead contest proceedings that the shell on this land is worth from $5000 to $6000 for commercial purposes, such as building roads, foundation for houses and the like, and that prior to the allowance of the homestead entry some 40,000 cubic yards of the material had been removed, the shell being worth about $1.00 per cubic yard in Tampa, Florida, the land is mineral in character, subject to mineral entry under the general mining laws and, therefore, excepted from the grant to the State of Florida. It is stated that the shell has become cemented together and has to be blasted out as ordinary rock is blasted. The material is claimed to be the same as or similar to, what is known as coquina, and the following quotations stated to be taken from the second annual report of the Florida State Geological Survey are presented:

> One of the most common of the marine Quaternary deposits in the coquina, which occurs at various points along the coast. This consists of a mass of more or less water worn shells cemented by calcium carbonate. The amount of cement is seldom great enough to close the openings between the individual shells, though in some localities the process of cementation has proceeded far enough to produce a rather compact fossiliferous limestone. There is usually more or less sand present, which is commonly in the form of thin laminae separating the shell beds, and various gradations from sand rock to shell may

be noted along the Florida coast. This rock was described by several of the earlier writers on the geology of the State. The following account is from a paper published by Jas. Pierce in 1825.

Extensive beds of shell rock, of a peculiar character, occupy the borders of the ocean, in various places from the river St. Johns to Cape Florida. They are composed in unmineralized marine shells, of species common to our coast, mostly small bivalves, whole and in minute division, connected by calcareous cement. I examined this rock on the isle of Anastasia opposite St. Augustine, where it extends for miles, rising twenty feet above the sea and of unknown depth. It has been penetrated about thirty feet. In these quarries, horizontal strata of shell rock of sufficient thickness and solidity for good building stone, alternate with narrow parallel beds of larger and mostly unbroken shells, but slightly connected. Hatchets are used in squaring the stone. Lime is made from this material, of a quality inferior to ordinary stone lime. The large Spanish fort, and most of the public and private buildings of St. Augustine, are constructed of this stone. The rock extends in places into the sea, with superincumbent beds of new shells of the same character. Similar shell rock is found on the continent in several places.

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COQUINA.

The word is here used, as it is used on the east coast, to designate those deposits of cemented shell fragments and quartz sand that can be seen at many localities near the present ocean shore of southern Florida.

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All phases between shell rock and material which is made up mostly of quartz sand, can be found near Hillsboro Inlet, Delray and Palm Beach.

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Coquina has been quarried for road material at several localities along the east coast. For this purpose, it is not so satisfactory as the Miami oolite, the coquina is not so calcareous as the oolite, is loosely cemented, where quarried, and breaks up instead of packing solidly.

* * * * * * *

The coquina rock of Anastasia Island near St. Augustine has been known as a building stone for more than three hundred years. This coquina was, in fact, the first stone used for building purposes in America, its use having begun with the settlement of St. Augustine about 1565. Coquina consists of a mass of shell of varying size or fragments of shells, cemented together ordinarily by calcium carbonate. A small admixture of sand is in some instances included with the shells. When first exposed the mass of shells is imperfectly cemented and the rock is readily cut into blocks of the desired size. Upon exposure, however, the moisture contained in the interstices of the rock evaporates and in doing so deposits the calcium carbonate which it held in solution thus firmly cementing the shell mass into a firm rock. Thus endurated the resisting qualities of the rock are good. The shells from this formation have been extensively used with concrete in the construction of modern buildings at St. Augustine. Aside from its occurrence on Anastasia Island, coquina is found at many other points along both the east and west side of the peninsula.

The Department does not concur with the contention that this deposit is a mineral within the meaning of the general mining laws. It presents features greatly similar to the deposits of sand and gravel

considered in the case of Zimmerman *v.* Brunson (39 L. D., 310). The Department there said (at page 313):

> From the above resume it follows that the Department, in the absence of specific legislation by Congress, will refuse to classify as mineral land containing a deposit of material not recognized by standard authorities as such, whose sole use is for general building purposes, and whose chief value is its proximity to a town or city, in contradistinction to numerous other like deposits of the same character in the public domain.

In harmony with that holding, the deposit of shell rock here involved cannot be held a mineral under the general mining laws.

The plat of T. 3 N., R. 5 E., discloses that that township is rendered fractional by the boundary line between Georgia and Florida and contains no section 16. By the act of March 3, 1845 (5 Stat., 788), there was granted to the State of Florida "section number sixteen in every township, or other lands equivalent thereto, for the use of the inhabitants of such township, for the support of public schools." Section 2275, R. S., as amended by the act of February 28, 1891 (26 Stat., 796), provides:

> And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being factional, or from any natural cause whatever.

The method of making selections to satisfy such deficiencies is set forth in section 2276, R. S., as amended by the act of February 28, 1891.

In the protest it was alleged that the land is chiefly valuable for building stone and is, therefore, subject to entry as a placer claim under the act of August 4, 1892 (27 Stat., 348). This act provides:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer-mineral claims: *Provided*, That lands reserved for the benefit of the public schools or *donated* to any State shall not be subject to entry under this act.

Assuming, without deciding, that the material here present is building stone within the meaning of the above act, it should be pointed out that the location was not made until after the filing of the State selection and the publication of notice thereof. In South Dakota *v.* Vermont Stone Company (16 L. D., 263) it was held that lands valuable for building stone were not excepted under the act of August 4, 1892, from a grant to a State for school purposes, it being stated at page 264:

> The passage of this act makes land chiefly valuable for building stone subject to entry under the placer mining laws, unless such lands have been reserved for the benefit of the public schools or donated to any State.

Section 2275, R. S., appropriates and grants other lands of equal area to be selected by a State as indemnity for a deficiency in the lands granted for school purposes. The indemnity lands are accordingly "donated" to the State when properly selected by it and are thereafter excluded from subsequent location as a building stone placer under the proviso of the act of August 4, 1892. The present location being subsequent in point of time to the selection by the State, is, therefore, made upon land not subject to such location and constitutes no bar to the allowance of the State selection.

The decision of the Commissioner is accordingly affirmed.

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## HUGHES v. STATE OF FLORIDA.

Motion for rehearing of departmental decision of August 14, 1913, 42 L. D., 401, denied by First Assistant Secretary Jones, October 27, 1913.

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## SVAN HOGLUND.

*Decided August 29, 1913.*

NATIONAL FOREST LANDS—HOMESTEAD ENTRY.

Where a homestead entryman at the time of withdrawal of the lands for forest purposes was in default, but no proceeding was instituted against his entry until after he had cured his default by further compliance with law and the submission of proof which would have entitled him to patent had no withdrawal intervened, he is entitled to patent notwithstanding such withdrawal.

JONES, *First Assistant Secretary:*

Svan Hoglund has applied to the Department for the exercise of its supervisory authority with reference to his homestead entry for the NE. ¼ SE. ¼ and fractional SE. ¼ NE. ¼, Sec. 34, N. ½ SW. ¼ and fractional SW. ¼ NW. ¼, Sec. 35, T. 19 N., R. 4 E., H. M., Eureka, California, land district, which was canceled by departmental decision of May 13, 1913, motion for rehearing whereof was denied on July 15, 1913.

This entry was made on July 26, 1902, it being stated in the application that Hoglund settled on the land on July 1, 1902.

The land embraced in the entry was included in the Klamath Forest Reserve, on May 6, 1905 (34 Stat., 3001), subject to the following exception:

> Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States land office or upon which any valid settlement has been made, pursuant to law, and the statutory